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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

JAMES I. WOOD,
Petitioner,

vs.

STATE OF GEORGIA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Court of Appeals of Georgia.

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To the Court of Appeals of Georgia.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, James I. Wood, respectfully shows,

I. OPINION BELOW.

Petitioner prays that a writ of certiorari issue to review the judgment of the Court of Appeals of Georgia entered in the case of **James I. Wood v. State of Georgia**, 103 Ga. App. 305, 119 S. E. 2nd 261 (1961), same being case number 38574 in the Court of Appeals of Georgia.

II. JURISDICTION.

This judgment of the Court of Appeals of Georgia was dated and entered on February 23, 1961.

A rehearing in said judgment was denied by the Court of Appeals of Georgia on March 10, 1961.

A petition to the Supreme Court of Georgia for writ of certiorari to review the judgment of the Court of Appeals of Georgia was denied on May 22, 1961. A motion for reconsideration of the petition for certiorari was denied by the Supreme Court of Georgia on June 8, 1961. Within 90 days thereafter, this petition is filed.

The jurisdiction of the Supreme Court of the United States to review this case on petition for certiorari rests upon 28 U. S. C. 1257 (3), because in this case petitioner specially set up and claimed rights, privileges, and immunities under the Constitution of the United States.

III. QUESTIONS FOR REVIEW.

In view of the freedom of speech and press granted citizens of this country under the First and Fourteenth Amendments to the Constitution of the United States:

1. If a county judge uses the form of a special charge to a grand jury to make an inflammatory, prejudicial, and derogatory attack on Negro voters in all news media, may a county sheriff be imprisoned for contempt because of his public criticism of the judge's act?

2. May state courts apply the doctrine of "scandalizing the court" to hold in contempt one who publishes criticism of a state court's act?

IV. CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The Fourteenth Amendment to the Constitution of the United States provides:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

V. STATEMENT OF CASE.

In the midst of a local political campaign, on June 6, 1960, a state court judge made a "special charge" to a county grand jury. This "charge" was delivered before reporters for all local news media and all news media had been notified to have reporters present in the court room at that time. The judge stated that 80 to 85% of Negroes were "bloc voting", that colored voters did not do their own "thinking and evaluating", that money spent for newspaper advertisements, radio announcements, etc., in solicitation of "the Negro vote" actually amounted to a purchase of such votes, and that the election laws of the State were being violated. The "charge" as a whole clearly implied that any public official who received "a Negro Bloc vote" did so through "unfair, corrupt or unlawful practices" (R. 12-21).

The next day the Sheriff of the County, petitioner herein, gave to local news media a news release which severely criticized the judge's action and warned that such action threatened political intimidation and persecution of Negro voters in the county under the guise of law enforcement (R. 22, 23, 24).

One month later petitioner was cited for contempt of court because he had issued the news release (R. 10-26).

The following day, July 7, 1960, petitioner released a public statement saying that his defense would be that he had spoken the truth, that he had a right to speak the truth, and reiterated the truth of what he had previously stated (R. 38, 39, 40).

The citation for contempt was amended to charge that this last public statement of the petitioner was an additional count of contempt of court (R. 27-41).

On hearing before the trial judge who issued the contempt citation, no evidence whatsoever was introduced to show that the publications of petitioner resulted in any actual interference or obstruction of the court or grand jury. A short statement of a few circumstances existing at the time the statements were published is contained in a stipulation of facts entered in the case (R. 112).

The gravamen of the contempt citation as twice amended, and the gravamen of the state's case against petitioner, was that the simple publishing of petitioner's news release and defense statement, **in and of itself** was a contempt of court and **in and of itself** was clear and present danger to the administration of justice (R. 92, 96).

In the court of first instance, petitioner, by general demurrers to the contempt citation, did specially set up and claimed his rights, privileges, and immunities under the Constitution of the United States and set forth verbatim the provisions of the First Amendment thereof guaranteeing his freedom of speech and the provisions of the Fourteenth Amendment thereof guaranteeing his constitutional rights against state action (R. 45-50, 68-73). Also in the written response of petitioner to citation, petitioner again plead and specially set up and claimed "the liberty of speech guaranteed to him by the Fourteenth Amendment . . . and as provided in the First Amendment to the Constitution of the United States . . ." (R. 80, 81, 82).

The trial judge overruled all of petitioner's demurrers (R. 110) and on the facts and pleadings adjudicated that petitioner was in contempt of court on each of the counts of the citation as amended, and ordered petitioner to prison.

The case went to the Court of Appeals of Georgia on writ of error, in which appellate court petitioner by Bill

of Exceptions assigned error on the judgment overruling his demurrers and on the judgment adjudicating him in contempt of court (R. 2, 3).

The Court of Appeals of Georgia affirmed the judgment of the lower court as to Count 1 (petitioner's news release) and as to Count 3 (petitioner's defense statement), but reversed the judgment of the lower court as to Count 2 of the contempt citation (involving an "open letter" published by petitioner). Petitioner does not herein seek review of the judgment of the Court of Appeals as to Count 2.

The Supreme Court of Georgia denied certiorari in the case, thus making the Court of Appeals of Georgia the highest state court in which a judgment could be had in petitioner's case.

VI. REASONS FOR GRANTING WRIT OF CERTIORARI.

(1) The decision in this case is contrary to the settled prior decisions of the Supreme Court of the United States in the cases of **Bridges v. California,** 314 U. S. 252, 62 S. Ct. 190, 86 L. Ed. 192 (1941); **Pennekamp v. Florida,** 328 U. S. 331, 66 S. Ct. 1029, 90 L. Ed. 1295 (1946); **Craig v. Harney,** 331 U. S. 367, 67 S. Ct. 1249, 91 L. Ed. 1546 (1947); and **Cammer v. United States,** 350 U. S. 399, 100 L. Ed. 474, 76 S. Ct. 456 (1956).

(2) The decision in this case holds that state courts which are created by state constitutions are not limited, in their power to define contempt, by the provisions of the Constitution of the United States; however, such state action is contrary to the principles of law contained in **Schneider v. State,** 308 U. S. 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939); **Kingsley International Pictures Corp v. Re-**

gents of University of N. Y., 360 U. S. 684, 79 S. Ct. 1362, 3 L. Ed. 2nd 1512 (1959); **Hague v. C. I. O.**, 307 U. S. 496, 59 S. Ct. 954, 83 L. Ed. 1432 (1939); **Gosjean v. American Press Co.**, 297 U. S. 233, 56 S. Ct. 444, 80 L. Ed. 660 (1936).

(3) The objective test of "clear and present danger" established by this court in **Bridges v. California**, 314 U. S. 252, is perverted to a subjective test of "tendency" by the decision of the Court of Appeals of Georgia in this case, [Headnote 1 (b)]. This decision produces a lack of uniformity in the application of the Constitution of the United States among the several states and the citizens thereof, and denies to a citizen of the United States who is a citizen of the State of Georgia the rights guaranteed to all citizens under the First and Fourteenth Amendments to the Constitution of the United States.

VII. **ARGUMENT**.

The final decision in this case will determine whether or not state courts and grand juries may be used to intimidate Negro voters of the southern states on the basis that "bloc voting" is illegal and corrupt. If such state court action is immune from public criticism through use of the contempt power to imprison, then the freedom of speech and press provisions of the federal Constitution provide no protection to one who would publicly disagree.

A state judge has no right to deliver an inflammatory and prejudical charge to a grand jury, **Clair v. Nebraska**, 40 Neb. 534, 59 N. W. 118, 28 L. R. A. 367 (1894), and certainly publicity of such a charge in all news media is not a judicial act, but does make the effect of such a charge community wide.

Where a community is inflamed by racial rumors and accusations, the twin hounds of prejudice and passion are loosened, and constitutional guarantees of free election and free speech are often brushed aside and denied.

In this case there is no proof of resulting danger to the community, the grand jury or to the court by reason of petitioner's statements. No such danger was plead or proved because the citation for contempt alleged that such statements were each "in and of itself" a contempt of court and the trial judge so determined, and ruled that the truth of such statements were no defense, by overruling petitioner's demurrers.

Georgia courts, created by the state constitution, have long claimed all the power to define contempt possessed by all courts of record prior to the adoption of the State Constitution in 1777. **Bradley v. State**, 111 Georgia 168,

36 S. E. 630 (1900); **Atlanta Newspapers, Inc., v. State,** 216 Ga. 399, 116 S. E. 2nd 580 (1960).

The case of **In re Fite,** 11 Ga. App. 665, 76 S. E. 397 (1912), which is quoted at great length in the opinion now before this court for review, contains the most detailed reasoning of the doctrine of "scandalizing the court" to be found in American jurisprudence.

The decision in petitioner's case should be reviewed by this Court because the freedom of speech and press provisions of the First Amendment to the Constitution of the United States prohibits to courts of this country the power of King's courts to lay by the heels one who scandalizes the court in publications outside the presence of the court. **Bridges v. California,** 314 U. S. 252 (1941); **Pennekamp v. Florida,** 328 U. S. 331 (1946); **Craig v. Harney,** 331 U. S. 367 (1947).

Likewise, the Fourteenth Amendment to the Constitution of the United States prohibits state action which denies constitutional rights of citizens of the United States. **Kingsley International Pictures Corp. v. Regents of University of N. Y.,** 360 U. S. 684 (1959).

The decisions of this court would indicate that a citizen of the United States does not lose his constitutional rights of freedom of speech and press simply because at some times and for some purposes he serves as an officer of a court, particularly where the statements made were not a part of any transaction or service as a court officer. **Cramer v. United States,** 350 U. S. 399, 76 S. Ct. 456, 100 L. Ed. 474 (1956); **In re Harriett Sawyer,** 360 U. S. 622, 79 S. Ct. 1376, 3 L. Ed. 2nd 1473 (1959).

In conclusion, the following words of George Washington seem most appropriate:

"If men are to be precluded from offering their sentiments on a matter, which may involve the most serious and alarming consequences that can invite the consideration of mankind, reason is of no use to us; the freedom of speech may be taken away, and, dumb and silent, we may be led away like sheep to the slaughter."

Address to Officers of the Army (March 15, 1783.)

VIII. **CONCLUSION.**

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX A.

(Judgment in Question.)

Court of Appeals,
Of the State of Georgia.

Atlanta, February 23, 1961.

The Honorable Court of Appeals met pursuant to adjournment. The following judgment was rendered:

J. I. Wood v. State of Georgia

This case came before this court upon a writ of error from the Superior Court of Bibb County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed as to Counts 1 and 3 of the citation for contempt and reversed as to Count 2. Carlisle, Nichols and Jordan, JJ., concur. Townsend, P. J., concurs specially to Division 1 of the opinion. Bell and Frankum, JJ., dissent to Division 2 of the opinion. Felton, C. J., and Townsend, P. J., dissent to Division 3 of the opinion.

APPENDIX B.

(Text of Opinion Below.)

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1. The trial court did not err in finding the defendant in contempt under count 1 of the indictment.

(a) The constitutional courts of this state are not limited by the definition of contempts in Code, § 24-105, and may go beyond the provisions of the statute in order to preserve and enforce their constitutional powers by treating as contempts acts which clearly invade them.

(b) The grand jury is a constituent part of the court, and anyone whose conduct interferes with, or has a tendency to obstruct the grand jury, or endeavors to interfere with the performance of its duties may be found in contempt.

(c) The principles stated in headnote 3 also are appropriate to division 1 of the opinion.

2. The trial court erred in convicting the defendant on count 2 of the indictment for contempt.

3. (a) The trial court did not err in its conviction of the defendant on the third count of the citation for contempt.

(b) The success or failure of an attempt to interfere with the administration of justice is not a test of whether or not there is a contempt, since it can not be known what effect, if any, the attempt may have had.

(c) The truth or falsity of statements made in an attempt to obstruct or impair the administration of justice is irrelevant and, if contemptuous, such statements may be punished as a contempt.

(d) Punishment for contempt of court is not prevented by the constitutional guaranty of freedom of speech, Code, § 2-115, since contempt of court is an abuse of the liberty of speech.

(e) The due process, freedom of speech, and equal protection clauses of the Constitution of the United States do not bar punishment for contempt of court.

(f) The act of the judge in charging the grand jury with its duties is a judicial act, and an improper interference therewith may be found to be contempt of court.

(g) The lack of criminal intent or the presence of good faith will not bar a conviction for contempt of court.

(h) Punishment for contempt of court is not a denial of due process of law.

(i)-(k) The remaining of seventy-five demurrers are considered and disposed of in the opinion.

(l) Intemperate and repeated attacks upon the motives, judgment, and alleged biases of the judge which allegedly led him to charge the grand jury to make certain investigations, and which attacks could have had the effect of interfering with, or diverting the attention of the grand jury from its assigned duties, may properly be found to be contempt of court.

(m) The principles stated in headnote 1 also are appropriate to division 3 of the opinion.

The defendant, at the time sheriff of Bibb County, Georgia, was cited for and convicted of contempt of court by the Superior Court of Bibb County, Georgia. The facts out of which the contempt citation arose were as follows: On June 6, 1960, the opening day of the June Term, 1960, of the Bibb Superior Court, Judge Long charged the grand jury, which had been regularly impanelled and sworn for the term of court, giving them special instruc-

tions which were joined in by the other two judges of that court, advising the grand jury that a situation had arisen in the county which the court felt should be thoroughly and completely investigated by the grand jury. In this charge the jury was advised that there appeared to be an inane and inexplicable pattern of Negro bloc voting. The charge went on to point out that accusations had been made that candidates for public office had paid large sums of money to certain leaders in an effort to gain their favor and to obtain the Negro vote, and that there were also accusations that certain Negro leaders, after having met with a candidate and endorsed his candidacy, have changed and supported an opposing candidate who put up a large sum of money, and that this creates an unhealthy, dangerous, and unlawful situation which tends to corrupt public office holders and some candidates for public office. The charge went on to point out the violations of law which would be involved should the grand jury find these charges to be founded in truth. The charge cited Code § 34-9907, which provides, in part, that if any person shall buy or sell, or offer to buy or sell, a vote, or shall be in any way concerned in buying or selling, or contribute money or any other thing of value for the purpose of buying a vote at any election in this State, or in any county thereof such person shall be guilty of a misdemeanor. Code § 34-1907.1 also was cited. This section reads, "No person, firm, or corporation shall print, have, or possess a ballot or ballots or any likeness of the same, except the officials having charge of the general elections, primary elections, or special elections under the laws of this State, and the electors when engaged in the acts of voting." The charge went on to instruct the jury that if money is furnished to any person or group of persons for the purpose of hiring people qualified to vote to canvass other voters in an effort to influence their votes in behalf of any candidate that this would be a violation of law and against the public policy of the State. Certain

questions were posed to the jury which it was to investigate in inquiring into these charges of violations of election laws.

The next day, while the grand jury was in session and actually engaged in investigating the matters set forth in the charge by the court, the defendant prepared and issued a written statement which was by him and under his direction on that day released to local news media, causing the contents of this statement to be published and disseminated to the general public. At the time this "news release" was made, the grand jury had before them voting tabulations and other documents, including endorsements by certain political groups, relating to primaries and elections in which the defendant actively participated as a candidate for public office and as an active supporter of a candidate. It was stipulated between the solicitor general and the defendant that the judges of the Superior Court read the statement, and also that members of the Bibb County grand jury, during the course of its investigation about the matters they were charged to investigate, read the news release of the defendant, his "An Open Letter to the Bibb County Grand Jury," and a further statement which the defendant made on July 8th after he was cited for contempt of court. The "Open Letter to the Bibb County Grand Jury" was signed by the defendant with the title, "Sheriff of Bibb County." The news release of June 7th and the statement of July 8th were signed by him without the addition of the caption, "Sheriff of Bibb County."

The news release of June 7th stated:

"The people of Bibb County should take notice when their highest judicial officers threaten political persecution carried out under the guise of law enforcement.

"Whatever the Judges' intention, the action of the Superior Court Judges ordering a Bibb County Grand Jury

to investigate 'Negro block voting' will be considered one of the most deplorable examples of race agitation to come out of Middle Georgia in recent years.

"At a time when all thinking people want to preserve the good will and cooperation between the races in Bibb County, this action appears either as a crude attempt at judicial intimidation of negro voters and leaders, or, at best, as agitation for a 'negro vote' issue in local politics.

"No one would question the duty of a Grand Jury to investigate any and all election law violations. However, simple justice would demand that the Judge not single out the negro people for particular investigation. If we seriously wish to enforce the old law against hiring workers for canvassing or influencing voters, then let us start by indicting our U. S. Senators, Congressmen, and Governors and almost all elected State officials.

"If we overlook the mountain of white candidates and campaign workers who have violated this old law, to investigate the mole hill of few negro campaign workers, then truly we are manipulating the law in a manner to persecute the few.

"This is the type of political-legal action which brings down ridicule and demands for civil right legislation against the South.

"Negro people will find little difference in principle between attempted intimidation of their people by judicial summons and inquiry and attempted intimidation by physical demonstration such as used by the K. K. K.

"It is hoped that the present Grand Jury will not let its high office be a party to any political attempt to intimidate the negro people in this community.

"It seems incredible that all three of our Superior Court Judges, who themselves hold high political office, are so politically naive [naive?] as to actually believe that the

negro voters in Bibb County sell their votes in any fashion, either to candidates for office or to some negro leaders.

"If anyone in the community be free of racial prejudice, it should be our Judges. It is shocking to find a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office.

"It further seems the height of hypocrisy to dust off an old blue law that has been ignored for fifty years and suddenly order its rigid enforcement against a minority group of voters.

"However politically popular the judges' action may be at this time, they are employing a practice far more dangerous to free elections than anything they want investigated."

The "Open Letter to the Grand Jury" read as follows:

"Pursuant to the request that the general public furnish to you information concerning 'bloc voting' in this county, I wish to furnish you with the following information.

"For many years, even for decades, our newspapers, law enforcement agencies, and courts have permitted a situation to develop in Bibb County which is so dangerous that I feel it imperative to call it to your attention at this time.

"I refer, of course, to that gigantic 'bloc vote' which is controlled by a handful of men known as The Bibb County Democratic Executive Committee. The situation in this county has so deteriorated that almost no one can obtain any local office without first securing the sanction and approval of this handful of people.

"Accusations are made that large sums of money are paid in to this group of people in every election. Indeed

it is even alleged that a public official seeking re-election and who has no opposition, must nevertheless pay over hundreds upon hundreds of dollars to this group of leaders who control the democratic bloc vote in Bibb County. Accusations are further made that this group of leaders, known as the Bibb County Democratic Executive Committee, openly and notoriously violates the law of this State by soliciting the voters of this community on behalf of those nominees securing their approval. Reports further circulate that this small group of leaders receive money supposedly for the purpose of advertising, printing, etc., but no satisfactory explanation is ever made to the public of the means by which this organization is able, year after year, decade after decade, to control a mass vote in Bibb County.

"Obviously, it is not in the best interest of the people of Bibb County to always deliver a bloc vote to the selectees of this group of political leaders in the community.

"The Grand Jury should delve deeply into the means by which a select group in this community is able to brain wash the voting public so that the voters, like sheep, blindly bloc vote for certain sponsored candidates of the Democratic Executive Committee. Certainly this most notorious and long existing bloc vote overshadows and overpowers any other sub bloc of votes which may be under inquiry in the process of the current investigation.

"I assure the members of the Grand Jury that my office at all times stands ready to fully cooperate with the Grand Jury in the gathering of evidence and I can further assure the Grand Jury that if it takes under advisement an inquiry into the gigantic democratic bloc vote in this county, I will, personally, enter with great zeal into such an investigation on behalf of the Grand Jury."

The statement of July 8, 1960, after the citation for contempt brought against the defendant, stated:

"My defense will be simply that I have spoken the truth. Anyone who will read, point by point, my statements concerning the Judges' charge will find those statements true.

"The Judges were wrong to use 'Negro Bloc voting,' the campaign slogan of Talmadge, and similar phrases as language with which to instruct a Grand Jury. When I stated 'It is shocking to find a Judge charging a Grand Jury in the style and language of a race baiting candidate for political office' was it contempt of court or was I pointing out the truth?

"When I said 'If anyone in this community be free of racial prejudice, it should be our Judges' was this contempt of Court or was I stating a truth?

"The Judges were morally wrong to suddenly order a Grand Jury to single out the Negro political leaders for indictments under a forgotten law which even judges have violated. When I said 'It further seems that the height of hypocrisy to dust off an old blue law that has been ignored for fifty years and suddenly order its rigid enforcement against a minority group of voters' was this contempt of Court or was I speaking the truth?

"The Judges were professionally wrong in involving the Court in political affairs. I stated that the Judges' charges 'threaten political persecution carried out under the guise of law enforcement' and further that 'this action appears either as a crude attempt at judicial intimidation of Negro voters and leaders, or, at best, as agitation for a "Negro Vote" issues in local politics.' Can anyone read the Judges' instructions for indictments under the old 'influencing voters' law and honestly say no political persecution is threatened when almost all office holders have violated this law? Can anyone read the long charge reciting political rumors and charges against Negro leaders and voters and honestly say there is no appearance of any attempt at intimidation of Negro voters and leaders? Like

wise can anyone deny such a charge and such an investigation in the midst of local political races agitates a 'Negro Vote' issue?

"If the Court will permit I believe that many thousands of witnesses would testify in my behalf that they drew the same conclusions as I from the language used by the Judges in their charge.

"Is it just, or even fair play, for the Judges to say they intended no threat, no intimidation, no agitation and therefore it is contempt of court to publicly state honest, sincere conclusions and practical effects caused by the language of the charge.

"Two wrongs do not make a right, and the Judges are wrong to cite me for contempt. I cannot view the Judges' action in any light except to believe I am to be prosecuted for daring to criticize the Judges and for speaking the truth.

"I had hoped that the entire ill-will and race agitation stirred up by the Judges' charge would be permitted to die after a face-saving presentment by the Courts' Grand Jury. To this end I remained silent despite grossly false and discrediting conclusions presented. Now it appears that the Judges want the satisfaction of find [sic] me in contempt of court, but if they so do, they are in effect saying that the court has done no wrong because the court itself finds it has done no wrong."

The contempt citation, as amended, charged the publication of these three statements of the defendant, each as a separate contempt of the court, and charged that the language used was designed and calculated to be contemptuous of the court, to ridicule the investigation ordered by the charge, to hamper, hinder, interfere with, and obstruct the said grand jury and the court in the investigation order, and that the news release referred to

was issued from the Bibb County sheriff's office located in the Bibb County Courthouse, the same building in which the judge charged the grand jury, and that the language imputed lack of judicial integrity to the three judges of the Superior Court of the Macon Judicial Circuit. Count 2 of the citation charged that the letter entitled, "An Open Letter to the Bibb County Grand Jury" was delivered by the defendant to the bailiff of the grand jury at the time the grand jury was investigating the matters set forth in the charge of the court and while the grand jury was actually holding a hearing thereon in the Grand Jury Room of the Bibb County Courthouse, and that the defendant instructed the bailiff to deliver the letter to the foreman of the grand jury, which was done, and that it was at or about the same time he delivered the letter to the grand jury that he released copies to the news media, and that this open letter to the grand jury was designed and calculated to be contemptuous of the court and to ridicule the investigation and to impute lack of judicial integrity to all three judges of the Superior Courts of the Macon Judicial Circuit, and that at the time the letter was issued the grand jury had not completed its investigation into the matters about which it had been instructed by the court. The contempt citation was further amended to add to each count that the respondent was sheriff of Bibb County, a full-time employee of the county, and as such an officer of the Bibb Superior Court. Count 1 was further amended to charge that at the time the defendant issued his "news release" the grand jury had before it records and documents relating to primaries and elections in which the respondent had taken an active part both as a candidate and as an active supporter of a candidate, and that the grand jury had been charged to investigate said elections, and further that the news release was brought to the attention of the judges of the Bibb Superior Court and to the members of the grand jury as a result of publication of the statement by the

various news media, and that the statement as so published was actually read by members of the grand jury while they were engaged in the investigation of the matters about which the court had charged them, and that the issuing, publishing, and causing to be published of the statement by the defendant in and of itself created and presented a clear, present, and imminent danger to the investigation being conducted by the Bibb County grand jury into the matters about which it had been instructed by the court, and further presented a clear, present, and imminent danger to the proper administration of justice in the Bibb Superior Court. The amendment to count 2 further charged similarly that after the news release was read by the members of the grand jury, while engaged in investigation of the matters, that at the time defendant caused to be delivered to the grand jury an "Open Letter to the Bibb County Grand Jury," the grand jury had before it investigation records and documents relating to primaries and elections in which the defendant had participated, and that the jury was then in fact investigating such elections, and that the grand jury had determined to call him as a witness and did so later on. Further amendment to count 2 charged that the publishing and causing to be published of the letter amounted to a course of action designed and calculated to "ridicule, embarrass, tamper, delay, and interfere with and obstruct the Grand Jury in said investigation ordered by the court, and was further designed and calculated to ridicule the investigation and tamper, hinder, delay and interfere with the Court in its instructions to the Grand Jury," and, further, that the delivery of the letter to the grand jury and the publishing and causing to be published in and of itself created and presented a clear, present, and imminent danger to the investigation being conducted by the Bibb County grand jury into the matters about which it had been instructed by the court, and further created a clear, present, and imminent danger to the

proper administration of justice in the court; and that the preparing and delivering of the letter to the grand jury was an attempt by the defendant on his part to ridicule the investigation which was in progress, and did in fact interrupt, delay, and interfere with the business of the grand jury while the grand jury was taking testimony of witnesses regarding the investigation, and that the reading and consideration of the contents of the letter did actually interrupt, delay, and interfere with such investigation, and did thereby create and present a clear, present, and imminent danger to the investigation being conducted by the grand jury. The amendment to count 3 made similar charges concerning the statement made by the defendant on July 8th, charging that the issuing, publishing, and causing to be published of the statement presented a clear, present, and imminent danger to the investigation by the grand jury into the matters which the court had instructed it to investigate, and further presented a clear, present, and imminent danger to the proper administration of justice in the court of the handling of the contempt citation against the respondent, which citation was then and there pending in the Bibb Superior Court, and that the statement was actually read by the members of the grand jury while they were continuing their investigation of the matters about which they had been charged, and was actually read by the judges of the Bibb Superior Court. The amendment to count 3 further charged that this published statement was a course of action by the defendant designed and calculated to hinder, interfere with, and ridicule the grand jury in continuing its investigation of the matters about which the court had charged the jury, and this in and of itself presented and created a clear, present, and imminent danger to the proper investigation and proper conduct of the business of said grand jury. The "Statement" of July 8th was also charged to have been circulated by the

defendant to the news media in Macon, which the answer of the defendant impliedly admits.

The defendant filed 19 general or special demurrers to each of the three counts of the contempt citation, and to the citation as finally amended filed 6 additional demurrers to each count and renewed the original 19 demurrers to each count, for a total of 75 demurrers. The court overruled both the renewed and additional demurrers. After a hearing, the defendant was convicted on each count and sentenced to 20 days in jail on each count, to be served concurrently, and to pay a fine of $200 on each count.

The defendant excepted to the overruling of the renewed and additional demurrers, and further excepted to the order and judgment of the court adjudging him in contempt as being contrary to law and charging that the court should not have found him guilty of contempt of court on the basis of the facts submitted.

At the request of the president of the Macon Circuit Bar Association, the Hon. Charles J. Bloch and the Hon. T. Reese Watkins filed a brief as amici curiae, upon appeal, under Rule 4 of this court.

Bell, Judge. **At the outset may it be explained that the writer prepared and is publishing for the court the opinion and judgment with respect to counts 1 and 3 of the contempt citation. These counts appear here in divisions 1 and 3 respectively. Since the majority of the court en banc agreed with the views expressed by Judge Townsend upon count 2 of the citation, he has prepared the majority view on this count, and his expressions will appear in division 2 of the opinion.**

1. Reduced to its basic elements, the present appeal brings into conflict the constitutional right of freedom of

speech, on the one hand, and the right of the courts to carry on their proper functions without any improper interference. Contempt of court has been variously defined; in its broad sense it means disregard for or disobedience of the order or command of the court, but it also includes interruption of the proceedings by disorderly behavior or insolent language either in its presence or so near thereto as to disturb its proceedings or impair due respect for the authority, justice, or dignity of the court. 12 Am. Jur., Contempt, § 2, p. 389. Thus, "any conduct that in law constitutes an offense against the authority and dignity of a court or judicial officer in the performance of judicial function" is a contempt. Ex parte Earman, 85 Fla. 297, 95 So. 755, 31 A. L. R. 1226. "A constructive, indirect, or consequential contempt is one committed outside the presence of the court; it is an act done at a distance, which tends to belittle, degrade, obstruct, interrupt, prevent, or embarrass the court in the administration of justice." 17 C. J. S. 6, Contempt, § 4. Furthermore, whatever manifestly tends to constitute an interference with the proper exercise of the duties and functions of a grand jury while engaged in the consideration of such matters as may properly come before it constitutes contempt. 17 C. J. S. 4, 5, § 30 c, and cases there cited.

(a) Section 24-105 of our Code provides in part that the powers of the several courts to issue attachments and inflict summary punishment for contempt of court shall extend only to cases of misbehavior of any person or persons in the presence of the courts or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the courts in their official transactions, and the disobedience or resistance by any officer of the courts, party, juror, witness, or other person or persons to any lawful writ, process, order, rule, decree, or command of the courts. This statute was enacted in 1892, apparently pursuant to Article I, Section I, Paragraph XX

(6376) of the Constitution of the State of Georgia of 1877, which provided, "The power of the courts to punish for contempt shall be limited by legislative acts." This same provision was written into the Constitution of 1945, and is codified in Code § 2-120. Notwithstanding the wording of Code § 24-105, the Supreme Court has held and reiterated that the constitutional provision does not confer authority upon the Legislature to define what are contempts, and to declare that the court shall have jurisdiction over no acts except those specified, because the power to punish contempts is inherent in every court of record. The Supreme Court has held that Code § 24-105, insofar as it seeks to limit the jurisdiction of a constitutional court to punish contempts to certain specified acts, is not binding upon the courts, and they may go beyond the provisions of the statutes in order to preserve and enforce their constitutional powers by treating as contempts acts which clearly invade them. Bradley v. State, 111 Ga. 168 (1, 2) (36 S. E. 630); 50 L. R. A. 691; 78 Am. St. Rep. 157; and Atlanta Newspapers v. State of Georgia, 216 Ga. 399 (1), 402-3 (116 S. E. 2d 580). Part of the briefs of both parties are devoted to the question as to whether the present contempt occurred so near to the court as to constitute a contemptuous interference with its processes. Under the decisions of the Supreme Court, we do not regard it necessary to determine whether or not the contempts charged fit within the definition of Code § 24-105, because the constitutional courts are not to be limited as to what is a contempt by the acts of the Legislature.

(b) It appears clear that whether the contempt be regarded as one of the court or of the grand jury, the result is the same, since if there is a contempt of the grand jury, this is also a contempt of the court, as the grand jury is a constituent part of the court, and anyone whose conduct interferes with or has a tendency to obstruct the grand jury may be found to be in contempt. Commonwealth v. Mc-

Nary, 246 Mass. 46, 140 N. E. 255; 29 A. L. R. 486-7; 12 Am. Jur. 403, Contempt, § 21. The grand jury is but an arm of the court. Gates v. State, 73 Ga. App. 824, 826 (38 S. E. 2d 311).

"If there is any one thing in democratic society which must be presumed conclusively, until judicial determination to the contrary by a court of law of impeachment, it is the integrity of the courts. The structure of our government demands that freedom of speech be subordinated to the welfare of society in the respect for the integrity and sanctity of our courts. A judgeship is an institution and an ideal, and when a judge is accused of wrongdoing it is more than an attack upon an individual. It is an attack and an undermining of one of the most important supports of the government. If a judge is corrupt or incompetent, there may be a remedy by suit, prosecution, impeachment, or at the polls. The public policy of democracy is that the judiciary shall not be dragged in the mire because of a real or a supposed wrong. If such could be done, and results confined to punishing the judge, the rule might be different, but when it causes disrespect for the high office which the judge seeks to personify, and subjects it to ridicule and contempt, the tendency is for men to turn their backs on the institution created for the safety and well being of mankind and take the law into their own hands. The constitution does not guarantee freedom to 'say what we please' about a judge or a court. Contempt of court is an abuse of such a privilege. **In re Fite** (11 Ga. App. 665), supra. The right to define and punish for contempt is inherent in constitutional courts, so the definition of contempt in this case, involving the superior court, is not confined to the Code definition by which courts which are not constitutional are governed; and the question whether the conduct complained of interfered with the administration of justice in a pending case is not involved. **In re Fite**, supra; **Bradley v. State**, 111 Ga. 168

(36 S. E. 630, 50 L. R. A. 691, 78 Am. St. R. 157); **Cobb v. State**, 187 Ga. 448 (200 S. E. 796). In view of the radical language complained of in this case, imputing lack of virtue and integrity to the judge of the court for an act done in his official capacity, and in view of the law as laid down by the decisions cited, we hold that there was no error in overruling the pleas to the jurisdiction and in bar, and in adjudging the respondent in contempt." **Cobb v. State**, 59 Ga. App. 695, 701 (2 S. E. 2d 116). In the **Cobb** case there was considerable intemperate language used by the defendant in a book published by him which was circulated in the counties comprising the Ogeechee judicial circuit, in which, inter alia, the defendant had written that the trial judge was "as much a judicial prostitute as is any loose wretch who walks the streets a moral prostitute."

"The constitutional right of freedom of speech or of the press was not intended as a refuge for the contemner or slanderer or libeler. Contempt of the court, slander, and libel constitute **abuses** of the privilege, for the commission of which the offenders are justly and lawfully punishable." In re Fite, 11 Ga. App. 665 (6) (76 S. E. 397).

"The power of the judiciary rests upon the faith of the people in its integrity and intelligence. Take away this faith, and the moral influence of the courts is gone and respect for the law is destroyed. Other departments of the government may outlive unjust criticism, and may still render service to the people, even when unfairly assailed, but when confidence in the courts is gone, respect for the law itself will speedily disappear, and society will become the prey of fraud, violence, and crime. This one element in government and society which the people desire above all things else to keep from the taint of suspicion is the administration of justice in the courts." Ibid, p. 680.

The court below has adjudged the defendant in contempt upon all three counts. In view of the language

used and the dissemination of it by the defendant through the public news media, we cannot say that the conviction was in error upon counts 1 and 3. The language of the news release, the basis of count 1 of the citation for contempt, charged the judges of the Superior Court with threatening political persecution under the guise of law enforcement, and further charged them with bias against a minority group, and compared the effect of the instructions to the grand jury with the attempted intimidation assed by the Ku Klux Klan against this group. It is obvious that this was intended to interfere with or obstruct the grand jury in its investigation of the charges which the court had given to them. In this respect, it is the proper function of the judge to charge the grand jury. It is not the prerogative of the sheriff to either charge the jury or to interfere with the judge's charge.

2. However, as applied to count 2, it is very clear from an examination of Townsend v. State, 54 Ga. App. 627 (188 S. E. 560); Atlanta Newspapers, Inc. v. State of Georgia, 216 Ga. 399, supra; McGill v. State, 209 Ga. 500 (1) (74 S. E. 2d 78); Adams v. State, 89 Ga. App. 882 (81 S. E. 2d 507); Clark v. State, 90 Ga. App. 330 (83 S. E. 2d 45); Vines v. State, 69 Ga. App. 175 (24 S. E. 2d 864); and Bridges v. California, 314 U. S. 252 (62 S. Ct. 190, 86 L. Ed. 192), that the necessary attribute of tendency to obstruct the administration of justice has not been met. In the "Open Letter to the Grand Jury" the defendant in no wise suggested that the instructions of the court in regard to bloc voting were wrong or done with improper motive; he did not dwell on this subject at all. He did urge an investigation of the influence of the Democratic Executive Committee and suggest that bribes were exchanged for nominations by this group. He accused committee members of violations of law. He urged investigation of certain alleged practices in the same general language the court had used in dealing with

the Negro bloc vote. This letter might have been considered by the court along with the press release as showing that the motives of the defendant were to impugn the court's integrity, and as an additional reason for holding him in contempt on count 1, but count 2 alone contains no matter at all which would tend to obstruct the investigation by the grand jury of the matters set out in count 1. It deals with irrelevant material. Perhaps it was written in a satiric manner, and was intended to imply that the court was misdirecting the course of the grand jury's inquiry, but this does not appear from an examination of the letter, and there is nothing in the letter which would in any way impede the investigation as related to Negro bloc voting. Count 2 must stand alone to meet the test of whether it constitutes a "clear and present danger to the administration of justice" (**McGill v. State of Georgia**, 200 Ga. 500, supra) and it fails to meet this test. The Court erred in holding the defendant in contempt as to count 2.

3. (a) The third count of the citation for contempt arose out of the statement of July 8th which reiterated in large part the statements made in the original news release which was the basis of the first count, and charges the judges with being morally and professionally wrong, and again reiterates charges of judicial intimidation and political persecution. Although the defendant labeled the statement of July 8th as his "defense", the extensive reiteration of his previous assault upon the court served to compound his contumacious conduct. When the defendant disseminated this accusatory statement to the public news media in an apparent effort to hamper the grand jury which was still considering the charges given it by the court, this conduct could properly be found by the court below to constitute a contempt.

The first two demurrers of the defendant to counts 1 and 3 of the citation for contempt charging that they set forth

no grounds for holding him in contempt nor show any acts for which he should be convicted were properly overruled.

(b) Demurrers 3, 4, 5, and 6 to counts 1 and 3 charge that the citations in effect fail to allege any acts of the defendant which actually amounted to or accomplished an obstruction of the administration of justice, or that the act or acts formed a clear and present danger of obstructing the administration of justice. The trial court properly overruled these demurrers, for the success or failure of the attempt to interfere is not the test. That the attempt is not successful is no defense, since it cannot be known what, if any, effect it had. People v. Doss, 382 Ill. 307 (46 N. E. 2d 984). See also, 12 Am. Jur. 417, Contempt, § 37, and cases there cited. With respect to the question as to whether these acts of the defendant constituted a clear, present, or imminent danger or serious threat to the administration of justice, it is to be noted that the citation as amended so charges, the court below has by its conviction so found, and the evidence supports the finding.

(c) Demurrer 7 to counts 1 and 3 charges that there is no allegation that the statements were false or untrue, and that lacking such allegation the citations are fatally defective. This demurrer confuses the law of defamation with that relating to contempt of court. It is possible that a statement or act might be true but have no relevance to the proceeding and tend to obstruct or impair the administration of justice in a particular case. Furthermore, many of the statements made by the defendant as charged in these counts are matters only of opinion as to which obviously there can be no absolute test or proof of truth or falsity. The trial court properly overruled demurrer number 7 to counts 1 and 3.

(d) Demurrer number 8 to counts 1 and 3 raises the question of freedom of speech guaranteed by the Consti-

tution of the State of Georgia, codified in Code § 2-115, which provides, "No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; any person may speak, write and publish his sentiments, on all subjects, being responsible for the abuse of that liberty." One who is guilty of contempt of court cannot claim the protection of this section. **In re Fite**, 11 Ga. App. 665 (6), supra. Furthermore, the abuse of liberty of speech and freedom of the press are not guaranteed by this section. **McGill v. State**, 209 Ga. 500, supra. See also the discussion in division 1 of this opinion.

(e) Demurrers numbered 9 and 10 to counts 1 and 3 in effect raise similar issues citing the United States Constitution. We hold that a punishment for contempt does not violate the due process, freedom of speech, or the equal protection clauses of the United States Constitution.

(f) The 11th demurrer to counts 1 and 3 contends that the act of the judge in charging the grand jury was a non-judicial act as distinguished from a judicial act, and that the criticism by the respondent with respect thereto was, therefore, not such an act as could constitute a contempt of court. There is no merit to this demurrer, for the act of the judge in charging the grand jury is a judicial act. Demurrer number 11 was properly overruled.

(g) Demurrer number 12 to counts 1 and 3 contends that the citations set forth no ground for holding the defendant in contempt, for the reason that as sheriff he has both the right and the duty in the exercise of his executive functions to determine what the public safety and tranquility demand, and that the citation is void because it fails to negative in any way that he was performing such function.

While a sheriff may have a right and a duty in the exercise of his functions to determine what the public

safety and tranquility demand, this right is not vested exclusively in the sheriff, nor is it absolute, and where, as here, what he did is held to be a contempt of court, the vestures of his office will not shield him nor does it bestow license upon him. No criminal intent is necessary for there to be a contempt of court, although the denial of contumacious intent, though not ordinarily a defense, may be considered in mitigation of punishment. 17 C. J. S. 54, Contempt, § 42. If the rule were otherwise, one in contempt might always purge himself by an assertion of good intention. State v. District Court of Seventh Judicial District, 76 Mont. 222, 246 P. 250. See also, 12 Am. Jur. 439, Contempt, § 73.

(h) Demurrer number 13 to counts 1 and 3 raises again the question of denial of due process, contending that the citations deprive him of due process of law, in that the court is proceeding to prosecute a matter concerning which it has no jurisdiction, since the acts occurred outside the court room and in the exercise of freedom of speech. This demurrer was properly overruled.

(i) Demurrer number 14 moves to strike the allegation in counts 1 and 3 to the effect that he was at all times during the contemptuous acts cited as sheriff of Bibb County. The fact that the defendant was in fact the sheriff of Bibb County at the time, and as such an officer and an arm of the court, was relevant to the inquiry, properly considerable by the court, and this demurrer was properly overruled.

(j) Demurrer number 15 contends as to count 1 that the part of the citation to the effect that the statement made by respondent was disseminated to the general public should be stricken, on the ground that it is entirely irrelevant and immaterial. But the release to the public of the contemptuous matter presented to the grand jury was relevant and material, and demurrer 15 to the first count was properly overruled.

(k) Demurrer number 15 to count 3 attacks the allegation again as to the location of the sheriff's office and charges that the allegation that the respondent appeared is too vague and indefinite to show where he appeared from or to whom he appeared. Reading this paragraph 3 of count 3 as a whole, we feel it is sufficiently definite. The other contentions were properly overruled. Special demurrers 16, 17, 18, and 19 to counts 1 and 3 are all without merit, and were properly overruled by the trial court.

(l) We now come to the six additional demurrers to counts 1 and 3 of the citation for contempt. The additional demurrers 1 and 2 are merely repetitious as to effect of others previously considered, and are without merit. Demurrer number 3 to the amended citation charges that the allegation that he is on the Bibb County payroll is irrelevant. This demurrer has no merit, and neither does the objection to the allegation that the defendant is an officer of Bibb Superior Court on the ground that it is a conclusion of the pleader. Demurrers 4, 5, and 6 to the citation as amended merely reiterate the attacks which we have previously passed upon, and were properly overruled. For the reasons indicated in this opinion, the exception to the judgment of convictions on counts 1 and 3 was also properly overruled.

We do not intend by this decision to hold that the opinions, the judgments, the proceedings of the courts, or the judges themselves, are under any and all circumstances exempt from objection or remonstrative criticism. But where, as here, the three judges involved acted jointly, and in their place proceeded within the ideals and the letter of the law, and where, as here, there were vitriolic attacks upon the motives, judgment, and biases of these judges, and all this carried on by the sheriff, an officer of the law and of the court, at times during which the grand jury properly had before it for consideration the charge of the

court, we can only conclude that the sheriff's intemperate actions constituted contempt and the convictions on counts 1 and 3 were proper.

The judgment is affirmed as to the conviction on counts 1 and 3 of the citations for contempt, but reversed as to the conviction upon count 2.

In division 1 of this opinion, Felton, C. J., Carlisle, Nichols, Frankum, and Jordan, JJ., concur, and Townsend, P. J., concurs specially.

As to division 2, prepared and delivered by Judge Townsend, Felton, C. J., Carlisle, Nichols, and Jordan, JJ., concur. Bell and Frankum, JJ., dissent.

In division 3, Carlisle, Nichols, Frankum, and Jordan, JJ., concur. Felton, C. J., and Townsend, P. J., dissent.

Wood v. State of Georgia, B-80.

Townsend, Presiding Judge. (Specially concurring as to Count 1.) 1. First, it should be stated that I concur in the judgment of conviction of the defendant as to Count 1, on the ground that the contents of the newspaper article was both contumnacious and sufficient to amount to an obstruction of the administration of justice. It must appear from the record to be both of these things. **Clark v. State of Georgia,** 90 Ga. App. 330 (2) (83 S. E. 2d 45). It was definitely contumnacious in that it accused the judges of "threatening political persecution under the guise of law enforcement", of "a crude attempt at judicial intimidation"; of "manipulating the law in a manner to persecute the few," as "shocking . . . the height of hypocrisy", and so forth. **This was sufficient to amount to an obstruction of the administration of justice.** The court's charge instructed the grand jury to inquire into certain rumored infractions of criminal law by means of traffic in, and the purchase and sale of bloc votes between some candidates

for office and some Negro leaders in elections where it did not appear that any issue was involved such that their self interest would be a factor in their decision. The grand jury was in session and presumably investigating or about to investigate the matter at the time the article was published. The grand jury is an arm of the superior court and the law and a part of the machinery of government. **Gates v. State**, 73 Ga. App. 824 (38 S. E. 2d 311); **Cook v. Sikes**, 210 Ga. 722 (82 S. E. 2d 641). In **Atlanta Newspapers v. State of Georgia**, 216 Ga. 399 (116 S. E. 2d 580) the court, after quoting from **McGill v. State of Ga.**, 209 Ga. 500 (1) (74 S. E. 2d 78) to the effect that an abuse of the right to freedom of speech which results in obstructing the administration of justice will subject the abuser to punishment for contempt of court, held that the newspaper article in question there was not an abuse for the reason that at the time when it was published there was no reasonable duty on the newspaper to anticipate that the article in question would come to the attention of the jurors or otherwise interfere with the trial of the case.

There must always be a balance between the right of freedom of speech and the right to unimpeded justice. To paraphrase the Apostle, there is a time to speak and a time to keep silent. The time to speak, even to accuse the judge of hypocrisy and moral laxness, justly or unjustly, could well exist, say, during a political campaign when a candidate for office is arguing against the re-election of that judge. It could exist at other times, when no election is imminent, but under the general right of a citizen of the State to criticize his elected officials. When it cannot exist is when the words are directed toward the impeding of a judicial proceeding presently in progress. It is implicit in the decision in the Atlanta Newspapers case, supra, that the very same article, published at a time and in a place where it would tend to influence the jury, would constitute a contempt. I agree that Count 1 relating to a

newspaper article written by the sheriff, a man associated in the minds of many lay people with the pronouncement as well as the enforcement of the law, accusing the judge of instructing the grand jury to ferret out certain crimes relating to possible bribery, not in accordance with his duty to so instruct the jury, but as a cover for personal reasons aimed at stirring up race prejudice, is a contempt of the court and the grand jury necessarily calculated to impede the administration of justice, and should be punished as such.

"Judges are not exempt from public criticism of their official acts or conduct. It is only when such criticism obstructs the administration of justice that they constitute contempt of Court." **Townsend v. State of Ga.**, 54 Ga. App. 627 (188 S. E. 560).

2. (Dissenting as to Count 3.) In Count 3 of the rule for contempt the court found that the defendant committed an additional contempt when he issued a news release after the citation for contempt had been served on him, in which he stated publicly his defense against the attachment for contempt, contending that he spoke no more than the truth and that he had a right to speak the truth. The defense necessarily dealt with the charge, and throughout its body reiterated most of what the defendant had previously stated. It begins: "My defense will be simply that I have spoken the truth", which indicates that the contents of the contempt citation, including the prior statements made by the defendant, had already been made public. We have held in this opinion that, as to a contempt, truth is not necessarily a good defense, but this fact did not deprive the defendant of relying upon it and urging it before the court. Whether or not he later interposed the same defense that he announced he would urge, he had a right to urge it before the court, and it certainly amounted to no obstruction of justice for him to state outside of the court that he intended to do so.

This statement contains no new defamatory or obstructive material, and it is but a repetition of the original statements on which the contempt charge was made and an analysis of them in line with the proposed defense to be urged. Whether it amounted to a republication within the rule relating to slander and libel is completely irrelevant, and in my opinion the court in holding that this is an additional contempt is departing from the "clear and present danger" rule recognized by our courts and by the majority opinion. It was the court itself which, and we hold correctly, gave the statement status as a case in court when he cited the defendant, and there is and can be no rule of law which prevents a defendant in a judicial proceeding from making public his defense, whether in or out of court, on the ground that the publication of such defense is obstructive to the administration of justice. It is obvious that the defendant could file this same defense in answer to the citation and that the newspapers could publish it; therefore the defendant could relay its contents directly to the newspapers for the purpose of publication. In my opinion the court erred in holding the defendant in contempt under Count 3. All citizens against whom charges of any nature are brought must be accorded the right to defend, and any intimidation tending to restrict such right is a step toward totalitarianism.

Felton, Chief Judge, joins in this dissent.

Bell, Judge, dissenting as to division 2 of the opinion. For the reasons indicated in divisions 1 and 3 of this opinion, I feel the conviction upon count 2 should also be affirmed. In my opinion the "Open Letter to the Grand Jury," which formed the basis of count 2 of the citation for contempt was properly found by the court below to interfere with or obstruct the grand jury in its deliberations. The sum total of this letter reveals an attempt to

divert the grand jury from consideration of the charges given to it by the judge and an attempt to aim the attention of the jury at alleged violations of law by the Bibb County Democratic Executive Committee and away from the matters which the judge had charged the grand jury to investigate. In this respect it is certainly the proper function of the judge to charge the grand jury, and not the prerogative of the sheriff either to charge the jury or to interfere with the judge's charge to it.

Judge Frankum agrees with these views and has directed that he be recorded as concurring with this dissent to division 2 of the opinion.